

21 C.J.S. Courts § 113

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Courts

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III. Creation and Constitution; Officers of Courts

A. Creation, Organization, and Abolition of Courts

2. Exercise and Delegation of Power

§ 113. Exercise and delegation of power; generally

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West's Key Number Digest

West's Key Number Digest, [Courts](#)  42(1), 43

The legislature in exercising delegated authority with respect to the existence or jurisdiction of courts must act in conformity with the constitution granting such power.

The basic limitation on the exercise by the legislature of any power delegated to it to legislate with respect to the existence or jurisdiction of courts is that it must act in conformity with the organic law granting or delegating the power; in other words, it may not, while exercising the power respecting courts conferred by some provisions of the constitution, violate any other provisions of it.¹

In the exercise of such power, the legislature may not violate the rule against infringing upon or divesting the jurisdiction of constitutional courts.² The legislature cannot confer upon a statutory court powers prohibited³ or not authorized⁴ by the constitution, or reserved exclusively to other courts,⁵ or which it could not confer on courts already existing.⁶ Also, the legislature may

not, in prescribing the scope of a statutory court's jurisdiction, disturb a constitutional court's prerogatives.⁷

Under various state constitutions, the legislature is generally empowered to create certain courts, other than constitutional courts,⁸ in addition, and usually subordinate, to those established by the constitution.⁹ As a necessary incident of such power,¹⁰ the legislature may confer and define or specify their jurisdiction.¹¹ The only restraint upon the legislature's authority to fix the jurisdiction of any court created by statute is the state constitution itself.¹²

By the same token, the legislature has the power to increase, diminish, modify, alter, or withdraw the jurisdiction of such statutory courts;¹³ to prescribe how their jurisdiction shall be exercised;¹⁴ or otherwise to legislate concerning them.¹⁵ The legislature, having power in the first instance to create such courts, has power to limit their existence¹⁶ or to abolish them¹⁷ and to transfer their jurisdiction to other courts.¹⁸

In general, the grant of power to create courts, whether general or specific, includes by necessary implication the grant of such authority as is essential to effectuate the purposes intended.¹⁹

Types of courts.

Under some constitutions, the legislature may not create any courts other than the courts of the types for which the state constitution provides.²⁰

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Footnotes

- 1 Cal.—*Ex parte Jacobson*, 16 Cal. App. 2d 497, 60 P.2d 1001 (2d Dist. 1936).

Unified judicial system
The constitutional mandate for a unified judicial system was not complied with by a statute requiring counties to fund the respective court systems within their judicial districts.

Pa.—*Allegheny County v. Com.*, 517 Pa. 65, 534 A.2d 760 (1987).
- 2 Ga.—*Empire Inv. Co. v. Hutchings*, 166 Ga. 749, 144 S.E. 209 (1928).

Tex.—*Kelly v. State*, 724 S.W.2d 42 (Tex. Crim. App. 1987).
- 3 N.Y.—*Zambrotto v. Jannette*, 160 Misc. 558, 290 N.Y.S. 338 (Dom. Rel. Ct. 1936).
- 4 N.Y.—*Walsh v. Walsh*, 146 Misc. 604, 263 N.Y.S. 517 (Child. Ct. 1933).

- 5 N.Y.—*Zambrotto v. Jannette*, 160 Misc. 558, 290 N.Y.S. 338 (Dom. Rel. Ct. 1936).
- 6 Vt.—*Sabre v. Rutland R. Co.*, 86 Vt. 347, 85 A. 693 (1913).
- 7 N.J.—*Eder v. Hudson County Circuit Court*, 104 N.J.L. 260, 140 A. 883 (N.J. Sup. Ct. 1928).
- 8 Tex.—*Kelly v. State*, 724 S.W.2d 42 (Tex. Crim. App. 1987).
- 9 Alaska—*Oxereok v. State*, 611 P.2d 913 (Alaska 1980).
- R.I.—*State v. Byrnes*, 456 A.2d 742 (R.I. 1983).
- Wash.—*Municipal Court of Seattle ex rel. Tuberg v. Beighle*, 28 Wash. App. 141, 622 P.2d 405 (Div. 1 1981), decision aff'd, 96 Wash. 2d 753, 638 P.2d 1225 (1982).
- 10 Tenn.—*Spurgeon v. Worley*, 169 Tenn. 697, 90 S.W.2d 948 (1936).
- 11 Colo.—*Musick v. Woznicki*, 136 P.3d 244 (Colo. 2006).
- Or.—*State v. Jones*, 30 Or. App. 873, 569 P.2d 19 (1977).
- R.I.—*State v. Byrnes*, 456 A.2d 742 (R.I. 1983).
- Establish appellate jurisdiction**
It is the legislature that has the constitutional power to determine supreme court's appellate jurisdiction.
- Miss.—*5K Farms, Inc. v. Mississippi Dept. of Revenue*, 94 So. 3d 221 (Miss. 2012).
- 12 Ohio—*Ohio Bureau of Motor Vehicles v. Hill*, 12 Ohio Misc. 2d 7, 466 N.E.2d 582 (Mun. Ct. 1984).
- 13 Mass.—*Opinions of the Justices to the Senate*, 372 Mass. 883, 363 N.E.2d 652 (1977).
- Tenn.—*Moore v. Love*, 171 Tenn. 682, 107 S.W.2d 982 (1937).
- 14 N.J.—*Eder v. Hudson County Circuit Court*, 104 N.J.L. 260, 140 A. 883 (N.J. Sup. Ct. 1928).
- Or.—*State v. Jones*, 30 Or. App. 873, 569 P.2d 19 (1977).
- 15 Ohio—*State ex rel. Ramey v. Davis*, 119 Ohio St. 596, 7 Ohio L. Abs. 109, 165 N.E. 298 (1929).
- Creation of administrative office**
Mass.—*Opinions of the Justices to the Senate*, 372 Mass. 883, 363 N.E.2d 652 (1977).
- Judges qualifications**
Alaska—*Oxereok v. State*, 611 P.2d 913 (Alaska 1980).
- Selection of judges**
W. Va.—*Hubby v. Carpenter*, 177 W. Va. 78, 350 S.E.2d 706 (1986).
- 16 Tex.—*Bray v. State*, 101 Tex. Crim. 346, 276 S.W. 244 (1925).
- 17 Mass.—*Opinions of the Justices to the Senate*, 372 Mass. 883, 363 N.E.2d 652 (1977).
- N.J.—*Knox v. Krause*, 152 N.J. Super. 278, 377 A.2d 960 (Law Div. 1977).
- 18 Mass.—*Opinions of the Justices to the Senate*, 372 Mass. 883, 363 N.E.2d 652 (1977).
- Tenn.—*Spurgeon v. Worley*, 169 Tenn. 697, 90 S.W.2d 948 (1936).

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Fla.—*State v. Sullivan*, 95 Fla. 191, 116 So. 255 (1928).

Ohio—*Underwood v. Isham*, 61 Ohio App. 129, 15 Ohio Op. 110, 28 Ohio L. Abs. 440, 22 N.E.2d 468 (9th Dist. Summit County 1939).

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Fla.—*Simmons v. Faust*, 358 So. 2d 1358 (Fla. 1978).

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